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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
LEAF RIVER TELEPHONE COMPANY )  
and )  
L.R. COMMUNICATIONS, INC. )  
 )  
Petition for Approval of a ) No. 03-0742  
Stock Redemption Pursuant to )  
Section 7-204 of the Public )  
Utilities Act. )

Chicago, Illinois  
December 17, 2003

Met pursuant to notice at 2:00 p.m.

BEFORE:

Ms. Leslie D. Haynes, Administrative Law Judge

1 APPEARANCES:

2 LAW OFFICE OF GARY H. SMITH, by  
3 MR. GARY H. SMITH  
4 180 North LaSalle Street, Suite 2001  
Chicago, Illinois 60601  
5 appearing for Leaf River Telephone Company;

6 MR. MICHAEL LANNON and  
7 MS. BRANDY D.B. BROWN  
8 160 North LaSalle Street, Suite C-800  
9 Chicago, Illinois 60601  
10 appearing for Staff.

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24 SULLIVAN REPORTING COMPANY, by  
25 Julia C. White, CSR  
26 License No. 084-004544

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I N D E X

Re- Re- By  
Witnesses: Direct Cross direct cross Examiner  
None.

E X H I B I T S

Number For Identification In Evidence  
None.

1           JUDGE HAYNES: Pursuant to the direction of the  
2   Illinois Commerce Commission, I now call Docket  
3   03-0742. This is Leaf River Telephone Company and  
4   L.R. Communications, petition for approval of a stock  
5   redemption.

6           May I have the appearances for the record,  
7   please.

8           MR. SMITH: Judge, my name is Gary L. Smith.  
9   My business address is 1204 South 4th Street,  
10   Springfield, Illinois, 62703. And I'm appearing on  
11   behalf of the applicants.

12          MR. LANNON: Appearing on behalf of the Staff  
13   of the Illinois Commerce Commission, Michael Lannon  
14   and Brandy Brown, 160 North LaSalle Street, Suite  
15   C-800, Chicago, Illinois, 60601.

16          JUDGE HAYNES: Okay. This is the first time  
17   this case has been up, and I received an e-mail from  
18   Mr. Smith indicating that there might not be a need  
19   for this certificate. And how did parties want to  
20   address this issue? Is this something we want to  
21   address in briefs before we address the actual  
22   petition or --

1           MR. SMITH: Well, the -- perhaps, Judge, if I  
2 may answer that --

3           JUDGE HAYNES: Hm-hmm.

4           A     -- I guess in the interest of full  
5 disclosure before the ethics legislation was signed  
6 into law, I was contact- -- or I contacted Staff,  
7 rather, just to inform them of this filing and to  
8 furnish them with some proposed testimony; and I  
9 received back an e-mail inquiring about certain  
10 statutory questions and certain applications of  
11 statutory provisions. Specifically, 7-102 and 7-101.  
12 I responded to that to Counsel and copied you in the  
13 hopes of, perhaps, clarifying legal issues and the  
14 positions.

15          JUDGE HAYNES: Go ahead. I'm listening.

16          MR. SMITH: And that's where we're at. I --  
17 I've spoken to Mr. Lannon since that time, and I  
18 believe that my e-mail clarified some things for the  
19 Staff and --

20          JUDGE HAYNES: Staff --

21          MR. SMITH: -- that's really it. I didn't  
22 really address from there.

1 JUDGE HAYNES: Did you have some plan in mind  
2 in how to proceed in this matter?

3 MR. LANNON: Yes. I'm not exactly sure what  
4 e-mail you're referencing. I know there was some  
5 communication back and forth. But if the e-mail was  
6 whether the matter was properly brought under section  
7 7-204 --

8 JUDGE HAYNES: That's the one I've got.

9 MR. LANNON: -- I believe Counsel did bring  
10 this matter in front of the Commission under the --  
11 under 7-204 properly.

12 JUDGE HAYNES: Okay.

13 MR. LANNON: Before we went on the record here,  
14 Mr. Smith and Ms. Brown and I spoke about scheduling  
15 going forward. And I believe what we've agreed to,  
16 if it's okay with you, is if we could set the -- have  
17 a status hearing scheduled for January 21st that  
18 if -- if this matter doesn't become a contes- --  
19 doesn't have any contested issues, we could use that  
20 status, perhaps, for an evidentiary hearing. If  
21 there are contested issues, then Staff would likely  
22 come in and ask for a full schedule at that point in

1 time.

2 JUDGE HAYNES: Okay.

3 MR. LANNON: In the mean time, we'll send  
4 discovery to the company, and we've already talked  
5 about some turnaround times and everything. I think  
6 we can proceed from here moving forward with the 21st  
7 in mind. And at that point in time, Staff will have  
8 a pretty good idea of the results of their  
9 investigation; and we'll know if there's any  
10 contested issues in this matter.

11 JUDGE HAYNES: Okay. And what about as far as  
12 whether -- so Staff believes it was correctly filed  
13 under 7-204?

14 MR. LANNON: That's correct. We believe this  
15 is a 7-204 matter.

16 JUDGE HAYNES: And so do you -- does the  
17 petitioner not agree with that? Is this something  
18 you'd rather brief before and deal with it that way  
19 or go ahead with the petition, assuming it's  
20 correctly filed under 7-204?

21 MR. SMITH: Judge, to answer that directly, we  
22 have filed under 7-204; and we believe that it was

1 properly filed under 7-204. I received an e-mail  
2 from Staff questioning whether there should really be  
3 a 7-101 or a 7-102.

4 JUDGE HAYNES: Okay.

5 MR. SMITH: And the response that I sent out,  
6 that I copied you on, said that telecommunications  
7 carriers under the act are specifically exempt from  
8 7-101 and 7-102. Therefore, they are not -- this  
9 petition could not be brought under those sections;  
10 and this applicant -- or these applicants are exempt  
11 from those provisions. That left an interpretation  
12 of the actual language of 7-204 and whether or not  
13 the language of the statute applied to this type of  
14 transaction. We believe it does --

15 JUDGE HAYNES: Okay.

16 MR. SMITH: -- and, therefore, we're willing to  
17 proceed accordingly.

18 JUDGE HAYNES: Okay.

19 MR. SMITH: We would welcome an exemption or  
20 something or some statement that said it wasn't and,  
21 you know, you're free to go; but, certainly, on the  
22 side of caution, we filed this; and, therefore, we're



1     before you --

2             JUDGE HAYNES:   Okay.

3             MR. SMITH:    -- on it.

4             JUDGE HAYNES:   So, really, we're just dealing

5     with this as a straight petition under 7-204; and

6     that's fine.

7             MR. SMITH:    And I think my e-mail clarified

8     some inquiries that Staff personnel had regarding the

9     nature of this transaction.

10            JUDGE HAYNES:   Okay.   Well, that clears that up

11   for me, and I am available January 21st.   Is there

12   anything else we would need to discuss today?

13            MR. SMITH:    Yes.

14            JUDGE HAYNES:   Okay.

15            MR. SMITH:    A couple -- two things.   First of

16   all, the time.

17            JUDGE HAYNES:   Is that a bench date, do we

18   know?

19            MR. SMITH:    It's a Wednesday so --

20            JUDGE HAYNES:   Let's make it at -- well, is the

21   afternoon good for you?

22            MS. BROWN:    It makes no difference.

1           MR. SMITH:   Doesn't matter.

2           JUDGE HAYNES:   At 11:00 then?

3           MR. SMITH:   11:00 is fine.

4           JUDGE HAYNES:   Okay.

5           MR. SMITH:   Will that -- that would take care

6   of you even if it's a bench session?

7           JUDGE HAYNES:   Yeah.   That's at 11:00 -- I

8   mean, 10:00.

9           MR. SMITH:   I guess I have three things.

10   Lawyers are always difficult counters.   In terms of

11   the -- Staff has indicated to me that they will want

12   to do some discovery, and I'd like to make the dates

13   of record, if we could.

14           JUDGE HAYNES:   Sure.

15           MR. SMITH:   Mr. Lannon has indicated to me that

16   Staff will send out data requests by December 24th.

17   I hope they're not working too late that day.   We

18   would be glad to receive them a day or two earlier

19   and that we would file a response by January 9th.

20   Now --

21           JUDGE HAYNES:   Okay.

22           MR. SMITH:   -- when I respond to the data

1 requests, am I going to just send those to Counsel?

2 JUDGE HAYNES: Yes. Not to me.

3 MR. SMITH: Not to you, and not to the record.

4 JUDGE HAYNES: And not to the Clerk's Office;

5 correct.

6 MR. SMITH: Okay. And after the 9th, as I

7 understand it, Staff will evaluate whether or not

8 this is a contested matter or not.

9 JUDGE HAYNES: And probably whether or not

10 they'll want to do more discovery.

11 MR. SMITH: That's correct. How am I going to

12 be notified of that?

13 JUDGE HAYNES: Well, you mean based on the new

14 ethics?

15 MR. SMITH: It confuses me, quite frankly. It

16 has a chilling effect on communications between

17 parties involved in a proceeding, and Staff is going

18 to make an election; and I'm -- I guess what I'm

19 asking is, how is that election going to be

20 exercised?

21 JUDGE HAYNES: Well, what we could do is just

22 keep January 21st as a status date regardless of

1     their determination, whether there are contested  
2     issues at that time, I could tell you; and then we  
3     will schedule an an evidentiary hearing. Either a  
4     short, you know, within a week, if there are no  
5     contested issues.

6             MR. SMITH: Could I make a suggestion?

7             JUDGE HAYNES: Hm-hmm.

8             MR. SMITH: Could we have a status hearing,  
9     perhaps, sooner than that and, you know, that we  
10    could do by telephone or something?

11            MR. LANNON: Sure. But let me just clarify one  
12    thing. I can communicate, and I fully intend to  
13    communicate with you, regarding procedural issues  
14    such as whether there's going to be more data  
15    requests or things like that.

16            MR. SMITH: Okay. Or whether you would  
17    consider this to be status or evidentiary?

18            MR. LANNON: That's right.

19            MR. SMITH: Okay. So you'll send me some  
20    written notice or phone call or something?

21            MR. LANNON: Yeah. Probably either via a phone  
22    call or an e-mail.

1           MR. SMITH:   Okay.

2           MR. LANNON:   And I believe I can successfully  
3   communicate with you regarding that without running  
4   into a problem with the new ethics.

5           MR. SMITH:   That's fine.   How do we let her  
6   know?

7           JUDGE HAYNES:   I'll just show up prepared  
8   either way.

9           MR. LANNON:   Okay.   That's right.   You won't  
10   need the prepared testimony in advance then?

11          JUDGE HAYNES:   Don't I have your prepared  
12   testimony?

13          MR. SMITH:   Yes.   You do.

14          JUDGE HAYNES:   And if Staff intended to prepare  
15   testimony, they would most likely file it on e-Docket  
16   and serve a copy to me.

17          MR. LANNON:   Yes.   We -- and we haven't set a  
18   date for that or anything because we don't know yet;  
19   but if we're going to use the 21st as an evidentiary  
20   hearing rather than as a status as it's now  
21   scheduled, then I -- you know, with the Judge's  
22   permission, if Staff felt it needed to file a piece

1 of testimony, and maybe we wouldn't, but perhaps we  
2 would, you know, to make a full record, then we would  
3 just do that sometime prior to the 21st and file it  
4 on e-Docket and copy the ALJ on it.

5 MR. SMITH: Okay.

6 MR. LANNON: And then sometime prior to the  
7 21st, if we had any -- we'd probably give the Judge a  
8 call just to forewarn her of what we -- what our  
9 intentions were to do with the 21st.

10 JUDGE HAYNES: Or -- that would be fine --

11 MR. SMITH: Okay.

12 JUDGE HAYNES: -- and probably by seeing the  
13 testimony, I could figure out if it was going to be  
14 contested.

15 MR. SMITH: Okay. That's fine. I'm just  
16 looking for, perhaps, the proper protocol here so  
17 that I don't inadvertently trigger some need for some  
18 disclosure or something to that nature. Yet, the  
19 parties have an absolute need to communicate.

20 We talked about one other matter prior  
21 to your coming in, and that had to do with data  
22 requests that I received from the Staff that I may

1     have some questions on; and I think Staff is,  
2     perhaps, unsure of how to handle those.  If I were to  
3     initiate them, do you have any -- if I had a  
4     substantive question about what it means, do you have  
5     any thoughts or comments on how I might appropriately  
6     present my question?  I mean, if you don't, I  
7     guess -- and not wanting to call Staff and have Staff  
8     feel that I've intruded on the toes of the statute, I  
9     guess I'll have to file a motion with a question or  
10    something; and do you have any thoughts on this?

11           MR. LANNON:  If I could just add --

12           JUDGE HAYNES:  Go ahead.

13           MR. LANNON:  -- in one thing.  I think you can  
14    always call me first, tell me what the question is.  
15    At that point, I will have to make a determination of  
16    where I think it falls under the new legislation.  If  
17    I can't -- if I make a determination that I can't  
18    communicate with you about it without making  
19    disclosures at that point in time, then you may have  
20    to make a determination of how you want to proceed;  
21    but if it's procedural, we can deal with it if it's  
22    substantive.

1           MR. SMITH: Well, if I ask you a question and  
2   it's substantive, it's not procedural at all, and you  
3   hear my question, doesn't that trigger your need to  
4   disclose? I mean, that's why I'm asking the  
5   question. You're going to make this determination,  
6   but haven't I already --

7           MR. LANNON: Communicated.

8           MR. SMITH: Haven't I already done it? And,  
9   therefore, now you've got to go do some reporting  
10  mechanism? I don't want to -- I don't want to do  
11  that.

12                       Now, if you're telling me, Oh, I can  
13  hear the question; but without giving you an answer,  
14  that doesn't in my view -- in your view, rather,  
15  trigger the statute, then I can do that. I'm trying  
16  do the right thing.

17           MR. LANNON: Yeah.

18           JUDGE HAYNES: I think the problem is that  
19  nobody quite knows exactly what the right thing is  
20  yet.

21           MR. SMITH: That's correct.

22           JUDGE HAYNES: And --



1           MR. SMITH:  So when everyone is going to err on  
2   this side of abundant caution --

3           JUDGE HAYNES:  Sure.

4           MR. SMITH:  -- which has a way freezing the  
5   progress --

6           JUDGE HAYNES:  Of course.

7           MR. SMITH:  -- of cases that may not even be  
8   contested.

9           JUDGE HAYNES:  So -- because I have no opinion  
10   on what would be appropriate or not, as far as  
11   communication between Staff and you, I would say that  
12   if you -- if you come to a point where you feel you  
13   can't dis- -- you need an answer and you can't  
14   discuss it with Staff, you can call me; and we'll  
15   schedule a status hearing, and we can all talk about  
16   it on the record; and you can do it by phone and we  
17   can have a --

18          MR. SMITH:  Okay.

19          JUDGE HAYNES:  -- status hearing.  I think  
20   hopefully, that would, perhaps, get around some  
21   issues.

22          MR. SMITH:  Okay.

1           JUDGE HAYNES:  Other than that, I don't know  
2   what advise to give you.

3           MR. SMITH:  Well, that's fine; and that's how  
4   I'll handle it.

5           JUDGE HAYNES:  Anything else?

6           MR. LANNON:  I have nothing to add.

7           MS. BROWN:  I have nothing.

8           MR. SMITH:  I have nothing else.

9           JUDGE HAYNES:  Okay.  So unless I hear  
10   otherwise, this is continued until January 21st at  
11   11:00 a.m.

12                               (Whereupon, the above-entitled  
13                               matter was continued to  
14                               January 21, 2004, at  
15                               11:00 a.m.)

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